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PBot inside

Intellectual Ammunition

Research and commentary for elected officials from the nation's leading think tanks.
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Potshots

I like legislative gridlock. What I hate is bipartisan consensus. Bipartisan consensus is like when my doctor and my lawyer agree with my wife that I need help.

P.J. O'ROURKE

To succeed inside a political party, one must cultivate an ability to sit still and remain polite while foolish people speak nonsense.

MORTON C. BLACKWELL

A good argument diluted to avoid criticism is not nearly as good as the undiluted argument, because we best arrive at truth through a process of honest and vigorous debate.

CLARENCE THOMAS

Democrats and Republicans are both skilled at taking your money. It's just that Republicans feel more guilty about it.

JOHN FUND

In one century we went from teaching Latin and Greek in high school to offering remedial English in college.

JOSEPH SOBRAN

Even if the Lord God Almighty were to draw a district map on the side of a mountain, it would probably still be challenged in court.

NORTH CAROLINA STATE SENATOR BRAD MILLER

The whole modern world has divided itself into Conservatives and Progressives. The business of Progressives is to go on making mistakes. The business of the Conservatives is to prevent the mistakes from being corrected.

G.K. CHESTERON

Have Term Limits Reached Their Limit?

by Patrick Basham

Despite a recent *New York Times* front-page story highlighting the alleged troubles plaguing term limits, the good news is the bad news is wrong. At the state level, term limits are proving a far more positive influence than critics are willing to let on.

Eighteen state legislatures currently experiment with term limits, but only 11 states have actually implemented term limits—that is, have seen legislators forced out of office—over the past five years. Of these 11, five states came on line in 2000. Last year, 380 state legislators left office due to term limits. Term limits will be effective in another seven states by 2008.

Commenting on their recent implementation in his state, pro-term limits Florida Governor Jeb Bush predicted, "It's going to bring about better government." This essay assesses the measurable effects of state term limits by focusing on two questions central to the viability of the term limit project: Do term limits stimulate political competition? And, from a limited government perspective, have term limits improved the policymaking process?

Producing definitive answers to these questions is somewhat constrained by the variety of term limit laws, full-time and part-time legislatures, and campaign finance regulations in effect across the term-limited states. Nevertheless, some tentative conclusions are possible.

POLITICAL COMPETITION

Term limit legislation, by design, guarantees the frequent turnover of legislators. Preliminary indications confirm that the number of candidates for state office has increased, with the result that voters in term-limited states now select from a larger pool of candidates and the outcomes of both primary and general elections are closer.

Research conducted in California by political scientists Mark Petracca and Richard Clucas found that term limits promote a more competitive electoral environment. Meanwhile, economists John R. Lott and Kermit Daniel drew this encouraging conclusion from their research on the issue:

Term limits have coincided with large changes in the level of political competition. . . . The changes are so large that more incumbents are being defeated, races are closer, more candidates are running, and there are fewer single-candidate races than at any other time during our sample period from 1976 to 1994.

Specifically, before the implementation of

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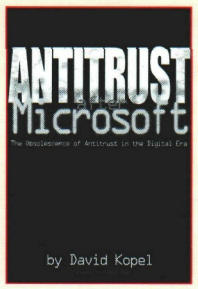

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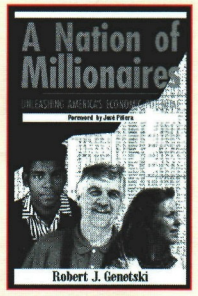

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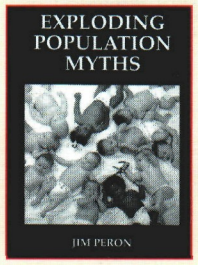

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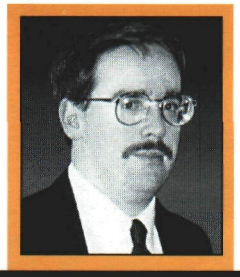

News from the Heartland

by John R. La Plante
Managing Editor

Now that the Bush administration has had a chance to unpack some of its boxes, how well has it done? In this issue of *Intellectual Ammunition*, several columnists comment on recent initiatives touted by the new President and his people.

On the regulatory front, Susan Dudley is encouraged by the temperament of key Bush appointees. Twila Brase, on the other hand, faults the new administration for doing little to ensure the privacy of medical records.

While political reporter Fred Barnes has called the faith-based initiative President Bush's signature issue, welfare columnist Mike Barkey is not so sure. Concerned the initiative may lead to organizational dependency, Barkey offers a plan to build faith-based social-service groups *and* ensure their independence. I'm not sure I'm enthusiastic about Barkey's proposals, but they are worth considering, given that some form of Bush's plan likely will pass.

Speaking of signature issues, Heartland President Joseph Bast has long championed free-market reform of education, and we offer an excerpt of his recent study of tuition tax credits. While it focuses on two proposals in New Jersey, the lessons apply everywhere. George Clowes, meanwhile, points out yet another benefit competition brings to education: it should be better than the current regulatory apparatus at curbing fraud and mismanagement in schools.

Myron Ebell reviews the Bush energy plan, and finds its emphasis on increasing production of fossil fuels preferable to its nod toward demand management and alternative fuels. Guest essayist John Campbell, a California Assembly member from Irvine, offers his take on the Golden State's electricity woes.

On the legal front, Morgan Reynolds comments on hate crimes, and guest columnist Mark Hillman, state senator from Burlington, Colorado, reviews the problem of government using hired guns for class action lawsuits.

Robin Johnson tells us how state mandates limit contracting efforts by schools, and Bartlett Cleland writes about Internet taxes. Bill Ahern describes Tax Freedom Day™ 2001 . . . which reminds me of another Bush plan: where's my tax cut?

More encouraging than any new proposals from the administration, however, is a new structure and political culture in several states, thanks to term limits in the legislatures. In our cover story, Patrick Basham reviews the political science literature, and finds that on both substance and procedure, term limits in the states have been good.

Note to my favorite legislators: I do appreciate you, but there's something about the political system that makes it in my interest and yours as well for even the best of officials to be turned out of office after a time.

UPDATED CONTACTS LIST

Our job here at *The Heartland Institute* is not only to provide you with our own solutions, but to point you to other useful organizations. That's why *Intellectual Ammunition* is largely written by people outside Heartland.

In addition, *Intellectual Ammunition* has long carried a list of other free-market organizations. Some are focused on one or two policy questions of national importance, while others work on improving conditions in one particular state.

I've revised and updated the list, which you can find on pages 20 to 23. We don't necessarily endorse the particulars of any group listed, but we do think they will give you some useful food for thought. No list is ever final, though; please send address corrections to me at laplante@heartland.org.

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continued from page 1

California term limits in 1996 there was a reduction in the political class's concentration of power, as legislators choosing to retire increased significantly from a rate of only 21 percent in 1992 to 36 percent between 1992 and 1996.

According to political scientist John Armor, California's experience also demonstrates that term limits increase the political choices available to voters. For example, the term limits ballot victory in 1990 resulted in a 25 percent increase in state senate candidates and a 50 percent increase in state assembly candidates in 1992; in 1994, the number of state senate candidates increased further while the number of assembly candidates was 15 percent higher than in 1990.

In 1999, Jean-Philippe Faletta and his political science colleagues found that in both California and Michigan term limits led to increased voluntary turnover and more competitive primary elections. Regarding Michigan, political scientist Jovan Trpovski and his fellow researchers found that "during the first two elections after members were termed out of the House (in 1998 and 2000) there was a slight increase in electoral competition for open seats."

Preliminary indications confirm that the number of candidates for state office has increased, with the result that voters in term-limited states now select from a larger pool of candidates . . .

Increased political competition is evident in other term-limited Midwestern states. Ohio's March 2000 primaries fielded the highest number of candidates in two decades.

POLICYMAKING

Prior to term limits, potential high-quality candidates were discouraged from running for office because it frequently took decades in political life before one achieved, largely through seniority rather than merit, any meaningful influence over legislative affairs and, ultimately, public policy. But term limits alter the institutional culture of a state legislature to the extent that freshmen legislators may possess immediate influence.

The indications are that, over the long term, term limits will act as a restraint on the size and scope of state government. Why? The initial evidence suggests the psychological and philosophical make-up of term-limited legislators, in tandem with a finite tenure, coalesce in favor of limited government.

Looking first at the politicians themselves, term-limited legislators appear more willing than their more senior colleagues to reassess the (statist) status quo—that is, they are more inclined to seek to change things, and to seek change in a more market-oriented direction. In part, this reflects the fact that, according to recent studies by Rich Jones and Nancy Rhyme of the National Conference of State Legislatures and political scientists Gary Moncrief and Joel Thompson, candidates in term-limited states are more ideological than their predecessors.

The influx of legislators who are relatively new to politics adds to the legislative mix a whole host of previously under-appreciated private-sector insights and experiences. The term-limited appear willing to exhibit an independence frequently absent from other state legislatures.

The relatively short shelf life of a term-limited legislator seems to reduce the incentives that lead careerist legislators to support electorally efficient, but economically inefficient, government spending.

For example, a national survey of 3,000 state legislators conducted by political scientists John Carey, Richard Niemi, and Lynda Powell, found that, "With respect to legislative behavior, term limits decrease the time legislators devote to securing pork, and heighten the priority they place on the needs of the state and on the demands of conscience relative to district interests."

Moreover, the scholarly evidence clearly indicates that the prolonged exposure to lobbyists and bureaucrats experienced by the long-term incumbent legislator leads to bigger, not smaller, government. In practice, there is a positive correlation between the length of a legislator's career and his votes in favor of more government spending.

Following James Payne's documentation of this relationship in the congressional context, more recently John Armor and the Cato Institute's Steven Moore found that term limits stimulate voting in a more frugal direction. This scenario is currently playing out, for example, in term-limited Arizona, where a number of big-spending career politicians were replaced by far more fiscally conservative citizen legislators.

A NEW ERA

Increasing competition in the political marketplace, as in the economic marketplace, leads to greater consumer choice and satisfaction. Furthermore, term limits may be influencing the motivation of those attracted to public office. More candidates may view a brief career in the state legislature as a worthwhile, if temporary, vocation.

At the state level, the greater competition fostered by term limits may be ushering in a new era of grassroots representative democracy. Term limits also may be altering legislative outputs. Limiting terms may lead to limited government, or at least a smaller government than would have happened in their absence.

The initial evidence suggests the psychological and philosophical make-up of term-limited legislators, in tandem with a finite tenure, coalesce in favor of limited government.

Those who remain skeptical of the term limits experiment may share political scientist Bruce Cain's sentiment, that "There's a deep suspicion . . . that the major effect of term limits is to deprive the Legislature of the kind of background on technical issues that it used to have." In response, it is noteworthy that a so-called "wise old guard" of career politicians formerly ruled the state of California. It was under such experienced, moderate leadership that the state's energy "deregulation" plan received *unanimous* legislative approval. Now, can somebody get the lights?

Patrick Basham is a senior fellow at the Center for Representative Government at the Cato Institute, in Washington, DC.

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Crime

Morgan Reynolds

Morgan Reynolds is director of the Criminal Justice Center at the National Center for Policy Analysis.

Racial Profiling

Here's a no-win subject: race and crime. But let's talk about it anyway.

The latest manifestation of our intractable racial divide is DWB: "driving while black." Cops allegedly stop black motorists more frequently than whites, looking for illegal drugs and other mischief. The motive? Bigoted cops just like to do this stuff.

It's not that simple, of course. Directing the Attorney General to study the problem, President Bush has put profiling high on his agenda, saying "it's wrong and we will not do it in America. We will not hinder the work of our nation's brave police officers. But by stopping the abuses of a few, we will add to the public confidence our police officers earn and deserve."

No trade-offs to worry about here at all. We'll repair the perception that blacks are being singled out, yet maintain vigorous law enforcement.

In cities like Los Angeles, however, active policing has fallen to zip because every officer is worried about whether his history of arrests is racially correct. Crime has taken a predictable jump up, largely at the expense of black victims.

A DISASTROUS WAR

There's some truth to the black perception of police harassment and injustice. The handy explanation of racism is faulty, though. The root of the problem traces back to the disastrous war on drugs. Cops aren't out to get blacks but to get drug dealers, creating collateral damage for black motorists.

Study after study supports the proposition that the criminal justice system, overall, is not systematically racist. With occasional exceptions, virtually everyone gets a fair shake in the U.S. justice system. It's a malicious myth that our modern legal system is discriminatory. Increasing the numbers of black police officers and black judges has not reduced the racial disparities in our prisons and elsewhere in the justice system. Studies find that if anything, black felony defendants are more likely than their white counterparts to be acquitted in jury trials.

There is, however, a real problem of disproportionate stops of black motorists. In a new study, three economists at the University of Pennsylvania, led by John Knowles, demonstrate that cops stop black motorists at a higher rate than white motorists not because of racism, but because it's the best way to get a lot of drug arrests and convictions.

How do the authors know this? They studied the 1990s data on highway stops by the Maryland State Police. Black motorists were stopped at a rate 3.5 times that for white motorists.

Traffic studies and police testimony show blacks and whites are not distinguishable by their driving behavior. Despite the relatively high stop rate for black motorists, the police found contraband at the same rate for both races, about one in three searches. So there is "statistical discrimination," we might say, rather than race prejudice at work.

The unpleasant fact is that blacks are disproportionately involved in the drug trade, and good police work takes this information into account. So at one level, it's all fine-'n'-dandy: The evidence says the Maryland cops were not racially motivated.

IMPROVING RACE RELATIONS

But even if the study is right, all is not well, because it means that two of three stops are criminally unproductive for both races. More important, innocent black motorists are stopped 3.5 times more often than their white counterparts. That's the real problem . . . and a justified beef of the black community.

While the law is currently unsettled, it does not prohibit the use of race in police work, provided there is a reasonable linkage between race and likely criminal involvement. Yet such "statistical discrimination," innocent of prejudice though it may be, is under attack. The ACLU, among others, demands an end to racial profiling in police work. That would make the police less efficient, and thereby increase crime.

There's some truth to the black perception of police harassment and injustice. The handy explanation of racism is faulty, though. The root of the problem traces back to the disastrous war on drugs.

The President and the rest of us want to improve "the just and equal administration of our nation's laws." A good place to start would be the whole war on drugs.

We've been at it for decades and to what end? Futility and disaster. The harassment of black motorists is just one of its evil consequences. As government power and police corruption has advanced, civil liberties receded and cynicism intensified.

The more we suffer from the government's war, the more pressure for government to retreat, at least on softer drugs like marijuana. That would de-escalate the DWB problem and improve race relations generally, to the surprise of many.

FOR MORE INFORMATION...

Racial Profiling Charges: How Should Texas Respond? Read more on the legal and political controversy of this police tactic. (Texas House Research Organization, October 2000, 9pp.)

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A common attack on any kind of choice school—a school not owned and operated by the local school board—is that such schools are not accountable to the public and thus need to be more strictly regulated to prevent possible misuse of public funds.

Choice critics insist any school that accepts publicly funded students also must be subject to the same rules and regulations concerning finances and spending that—they contend—make traditionally operated public schools accountable to the public.

But just how effective are these multiple levels of rules and regulations in ensuring the system's first priority, educating children in a safe environment, and that public funds are not spent inappropriately, wastefully, or fraudulently?

SAN FRANCISCO CASE STUDY

To ensure accountability, the San Francisco School Board is demanding the Edison Academy Charter School provide it with 35 different operational and financial reports. Yet the same school district is itself being investigated by the FBI to determine whether its mishandling of millions of tax dollars was criminal or "just" bad management.

> *[R]egulations . . . aren't sufficient to prevent continued corruption and incompetence in educating children in a safe environment.*

In reviewing recent news reports of public school problems across the nation, it quickly becomes evident that even though regulations supposedly make the public schools "accountable" to the public, they aren't sufficient to prevent continued corruption and incompetence. Examples can be found at all levels, from the school board—where hundreds, thousands, and sometimes millions of tax dollars are involved—to the U.S. Department of Education, where *billions* of tax dollars are involved.

U.S. DEPARTMENT OF EDUCATION

Education Secretary Rod Paige has pledged to address waste and fraud problems in his department. For example:

- a $6 billion discrepancy between what the department says it spends versus what the U.S. Treasury says it spends. Part of that difference may be related to what a 1999 audit revealed: $2.7 billion in collected funds the department should have returned to Treasury but didn't, in violation of the Credit Reform Act.
- In May, 11 people were charged with defrauding the department of more than $300,000 in property and more than $700,000 in false overtime claims.

STATE DEPARTMENTS OF EDUCATION

Although closer to the people than remote public officials in Washington, DC, state education officials often appear to operate with little oversight from elected officials:

- While serving as Kentucky's deputy education commissioner, Randy Kimbrough was able to embezzle more than a half-million dollars from the state Department of Education because the department violated state law by using unspent money as "grants" to various entities instead of returning the money to state coffers.
- In March, a state audit of the Massachusetts Department of Education concluded consultants to the agency's technology division had spent millions of dollars on questionable expenses, including parties and trips. The department may have wasted as much as $9 million in total.

LOCAL SCHOOL BOARDS

They may be the closest to the people, but local school officials don't always act in the best interest of taxpayers and parents.

- State lawmakers in Florida announced in April they will appoint an oversight board for any future land purchases by the Miami-Dade County Public Schools. That's because a state audit this spring revealed the district overpaid for land in 11 out of 14 cases, for a total overpayment of $7 million.
- In January, Paul Blanchette, former business manager of the Bay Path Regional Vocational High School in Charlton, Massachusetts, pleaded guilty to embezzling $5.4 million from the school's fund accounts over a seven-year period, using the money to acquire a stable of 40 racehorses.

To be sure, not all public school systems are as badly managed as these, and some are run quite well. In a choice system, though, accountability comes not from regulations, which clearly are insufficient, but from the fact those schools must continuously satisfy parents as consumers.

As Noble Street Charter High School principal Michael Milkie explained at a recent Congressional committee hearing, the accountability provided by parental choice is beautiful in its simplicity: "[I]f you don't meet their needs, you will be history."

Education

George A. Clowes

George A. Clowes is managing editor of *School Reform News*, a publication of The Heartland Institute.

A Lesson Plan for the Nation

FOR MORE INFORMATION...

Quality Checklist for Education Consumers. Here are 30 things parents can use to help determine the quality of a school. (Independence Institute, February 1990, 9pp.)

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Environment

Myron Ebell

Myron Ebell is director of global warming and international environmental policy at the Competitive Enterprise Institute in Washington, DC.

More Energy or a Better Energy Diet?

High energy prices and rolling blackouts have finally sparked a national debate on energy policy. This debate is long overdue. For eight years, the Clinton-Gore administration quietly pursued energy policies designed to lower production, constrict supplies, and raise prices.

For example, former President Bill Clinton and Vice President Al Gore touted natural gas as the fuel of the future . . . while closing off tens of millions of acres of federal land to gas exploration and making it much more difficult to obtain permits for new pipelines. While touting affordable energy, Gore cast the tie-breaking vote in the Senate to raise the federal gas tax.

Now that these policies have begun to bear fruit, the public is paying attention: A majority of Americans now believe there is an energy crisis. What should the federal government do about it?

THE BUSH PLAN

President George W. Bush has introduced a national energy policy that would reverse many of the energy suppression policies of the Clinton-Gore years. Free-market advocates have been quick to notice its flaws.

For eight years, the Clinton-Gore administration quietly pursued energy policies designed to lower production, constrict supplies, and raise prices.

It is true the plan contains a number of demand-side conservation proposals and has "a little something" for every special interest, ranging from clean coal technology to solar tax credits.

But these are minor imperfections. The core elements of the plan—designed to get government out of the way so private enterprise can make the investments required to supply Americans' energy needs—are strong.

The plan, produced by a task force chaired by Vice President Dick Cheney, correctly focuses on the regulation-caused bottlenecks in the nation's energy supply systems. If implemented, the plan will make it possible to build, on a large scale, the energy infrastructure so sorely lacking in the U.S. today: new pipelines, transmission lines, refineries, coal-fired power plants, and nuclear power plants.

Most major media outlets have been quick to accuse Bush of pandering to Big Oil, Big Coal, and Big Nuke. They clearly misunderstand elementary economics. Increasing energy supplies will not necessarily benefit energy producers. As supply goes up, prices should go down, and low prices often lead to low profits. The chief beneficiaries of more abundant and more affordable energy will be consumers.

PAY MORE AND USE LESS?

The environmental left, meanwhile, objects to the President's plan because it does "too little" to encourage energy conservation. That lament resonates strongly with America's intellectual elite, traumatized by the energy crisis of the 1970s and predictions that mankind would soon exhaust the Earth's resources unless we curb our wicked addiction to over-consumption. Even now, the residual guilt about using energy remains potent.

Most Americans, however, do not want to pay more for energy or to use less of it. That's why anti-growth environmentalists, who have been preaching the virtues of higher energy prices for decades, have changed their tune. Now, they complain about price-gouging and call for price caps on electricity, though they have yet to explain how price caps will encourage production or discourage consumption.

If you want to see the result of the left's policies, look at California. The state's government has forced one conservation measure after another for decades. Consequently, Californians now consume less electricity per person than any other state. But since Californians also resisted new power plants and insisted on retail price caps, they now face the ultimate form of conservation: rationing, also known as rolling blackouts.

While leading congressional Democrats have joined the chorus for price caps and conservation rather than production, they are being just as careful as Clinton and Gore were to conceal their real agenda. House Democratic Leader Dick Gephardt was driven to a press conference held at a Capitol Hill Exxon station to introduce the Democrats' alternative energy plan—in a Chevy Suburban, one of the biggest SUVs. When asked about this, Gephardt's press secretary replied, "We don't say anything about changing people's lifestyles."

While the Democrats' energy plan may not be about changing the lifestyles of important people like Dick Gephardt, it is entirely about forcing most people to use less energy. It would, for example, raise automobile fuel efficiency standards—meaning most people would be forced to buy smaller, less comfortable, less safe automobiles.

Those are the two sides of our national energy debate. May the better arguments win.

FOR MORE INFORMATION...

Why Do Natural Gas Problems Loom?
The supply of natural gas, a relatively abundant and clean fuel, has been restricted by counterproductive public policies. (Consumers' Research, April 2001, 5pp.)

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Health Care

Twila Brase

Public health nurse Twila Brase is president of Citizens' Council on Health Care.

Medical Records: The Government Grab

The public should not be so quick to believe that the little guy won in the David and Goliath battle over medical privacy. There was one glancing blow—a relatively impotent shot called the patient consent requirement—but the giant of medical record snooping is not dead.

After initially considering a complete re-write, President Bush decided to go forward with the medical privacy rule developed by the Clinton administration. The rule became effective in April, with implementation scheduled in two years. The nearly 52,000 public comments on the proposed regulation came to little.

To the very end, hospitals and health plans were outspoken about the millions of dollars it will cost to comply with the new patient consent provisions. Their discontent, combined with cheers from several well-known privacy advocates, has led many citizens to believe patient privacy has been secured for the future. In fact, however, the "privacy" rule is a federal license for government intrusion.

David, unhappy with violations of privacy by medical snoops, has been aiming at the wrong giant. The real Goliath—the very powerful federal government—remains alive and thriving.

PRIVACY OR COMMON GOOD?

In September 1997, as required by Congress, HHS Secretary Donna Shalala offered recommendations for medical confidentiality. Privacy, though, was not her primary concern. The principle of "public responsibility" took its place, as she wrote: "Individuals' claims to privacy must be balanced by their public responsibility to contribute to the common good, through use of their information for important, socially useful purposes, with the understanding that their information will be used with respect and care and will be legally protected."

Giving disclosure priority over privacy, Shalala wrote, "A federal health privacy law should permit limited disclosures of health information without patient consent for specifically identified national priority activities. . . . The allowable disclosures and corresponding restrictions we recommend reflect a balancing of privacy and other social values."

Since this is not consistent with the public's view of privacy, it's not surprising the department never defined the word. There are 63 definitions in the 368-page document . . . but not even one definition of patient privacy or medical confidentiality.

When the final rule was published, the Clinton administration claimed there were only two required disclosures in the privacy rule: to the patient and to HHS. True enough, but the rule established an entirely new set of disclosures that can be made *without patient consent*.

The long list of activities for which individually identifiable data can be disclosed includes: government health care databases, law enforcement investigations, public health initiatives, public health surveillance, disclosures on child abuse, neglect, or domestic violence, oversight of the nation's health care system, judicial and administrative proceedings, medical examinations of the dead, organ donation and procurement, research, to avert a serious threat to health or safety, military activities, and workers compensation. Private information on patients can even be disclosed to foreign governments working in collaboration with an American public health agency.

AGENCIES NOT RESTRICTED

Although the Bush administration tried to downplay its new role as incidental, the public should be alarmed that the new rule gives U.S. government officials full access to patient data. The HHS, or its agents, can require a health plan, hospital, or doctor to provide them with access to all medical records on any day at any hour. No search warrant is required. With the help of the Bush administration, the federal government has now become the overseer of the entire health care system—and another piece of the Clinton health plan has fallen into place.

Citizens may assume that HHS and other government officials must play by the federal medical privacy rules. Not so. Government agencies are not considered "covered entities" in the privacy rule. In fact, the rule says: "HHS does not have the authority to regulate re-use or re-disclosure of information by agencies or institutions that are not covered entities under the rule."

Commenting on the public's concerns about federal agencies sharing data with the police, HHS further notes: ". . . we do not have the statutory authority to regulate law enforcement and oversight agencies re-use and re-disclosure of protected health information. . . ." In other words, they can share it, sell it, or send it to whomever they please.

David, unhappy with violations of privacy by medical snoops, has been aiming at the wrong giant. The real Goliath—the very powerful federal government—remains alive and thriving. It's time for David to grab another set of stones. The days of giant-slaying are far from over.

FOR MORE INFORMATION...

Building Bureaucracy and Invading Patient Privacy: Maryland's Health Care Regulations. Maryland enacted significant health care reforms in 1993, with a significant loss to patient privacy. (The Heritage Foundation, April 1998)

Fax Call **312/377-3000** and request documents **#3266401** and **#3266402**

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Law

Mark Hillman

Mark Hillman is Assistant Minority Leader of the Colorado Senate and sponsor of the Government Attorney Ethics Act.

Justice for the Powerful

While media pundits and liberal apologists castigated Kenneth Starr for spending upwards of $40 million to investigate the misdeeds of former President Bill Clinton, those same quarters were conspicuously silent in reporting—much less criticizing—the staggering sums the states were, and still are, paying contingent-fee attorneys who bulldogged the tobacco industry into regulatory submission.

Compared to the harvests reaped by tobacco attorneys, Ken Starr's budget amounted to chump change. Moreover, the only personal gains realized by Starr and his staff were their modest salaries and any pittance a book contract or interview might yield.

The burgeoning industry of government-sponsored contingent-fee lawsuits, spawned by the tobacco conquests, truly represents the highest stakes in a litigation lottery that results in taxation, regulation, and legislation without representation:

- Texas trial lawyers were awarded $3.3 billion for their crusade against the tobacco industry.
- Three states shared $874 million of their tobacco bucks with the Mississippi law firm of Richard Scruggs.

When an impoverished person is wronged but cannot afford an attorney, a contingent-fee contract may be the only means for them to pursue justice. Government is hardly impoverished.

- Baltimore Orioles owner Peter Angelos has filed a lien against Maryland's tobacco settlement, seeking up to $1 billion for his services and arguing that $15,000 an hour is insufficient compensation.

Michael Horowitz of the Hudson Institute concludes tobacco litigation could provide up to "$500 million *a year* to 200 to 300 lawyers."

Apart from the constitutional mayhem of contingent-fee lawyers and activist judges usurping the role of the legislative and executive branches, the societal impact of the tobacco settlement and other potential cases of taxation-through-litigation are just as staggering. After all, smokers tend to be disproportionately poor. When tobacco litigation adds 40 cents to the cost of each pack of cigarettes, a *de facto* tax is imposed, largely on low-income individuals, and no one benefits more directly from that tax than millionaire contingent-fee lawyers.

But tobacco is just the tip of the iceberg. Junk foods, fatty foods, video games, Hollywood, and automobiles are merely a handful of the potential targets. In each case, low- and moderate-income families spend a larger share of their income consuming products from these industries than do higher-income groups.

One solution is strictly limiting the ability of state and local governments to hire private attorneys on a contingent-fee contract. South Dakota, Texas, and Kansas have passed variations of the Attorney Retention Sunshine Act, model legislation developed by the American Legislative Exchange Council, which subjects contingent-fee contracts to an open, public process. Meanwhile, Colorado has witnessed growing support for the Government Attorney Ethics Act, which would limit (and I use the term loosely!) government contingent-fee contracts to $1,000 per hour.

GOVERNMENT INTIMIDATION BY CONTRACT

When an impoverished person is wronged but cannot afford an attorney, a contingent-fee contract may be the only way to pursue justice. But government, with its vast resources and power of taxation, is hardly impoverished. In fact, the power and resources of government are often overwhelming and intimidating to the business targeted by litigation. That's why a pre-trial settlement is often preferable to the staggering costs of legal representation, even for a company with no liability under traditional tort law.

Contingent-fee contracts provide an enormous temptation for elected officials who are eager to put more money in government coffers without voting for a tax increase. Much like the targets of "something for nothing" marketing ploys, governments contemplating contingent-fee contracts must recognize "there's no such thing as free money." Taxpayers should expect their elected officials to consider the costs and risks of each case before committing tax dollars for sweeping litigation.

Further, contingent-fee contracts too easily shift the focus of litigation from upholding the law to maximizing monetary damages, and thereby maximizing the attorney's payday. Often, the interests of the state and its citizens are best served by verdicts or settlements that curtail consumer fraud or protect public safety—not by enormous awards that might drive a legitimate business to bankruptcy or drive up consumer costs.

Finally, government contracts with private attorneys ought to be justified by the time and resources invested by the attorneys. Legislative reforms must require comprehensive record-keeping by contingent-fee attorneys. Through such a process, attorneys can be properly compensated for their work, but the proceeds from exceptionally large judgments will benefit the state and its citizens, on whose behalf the case was filed.

FOR MORE INFORMATION...

No Taxation through Litigation. Litigation has become a way to increase government revenue without the political risks of a tax increase. (Evergreen Freedom Foundation, July 1999, 16pp.)

Fax Call **312/377-3000** and request document **#4848405**

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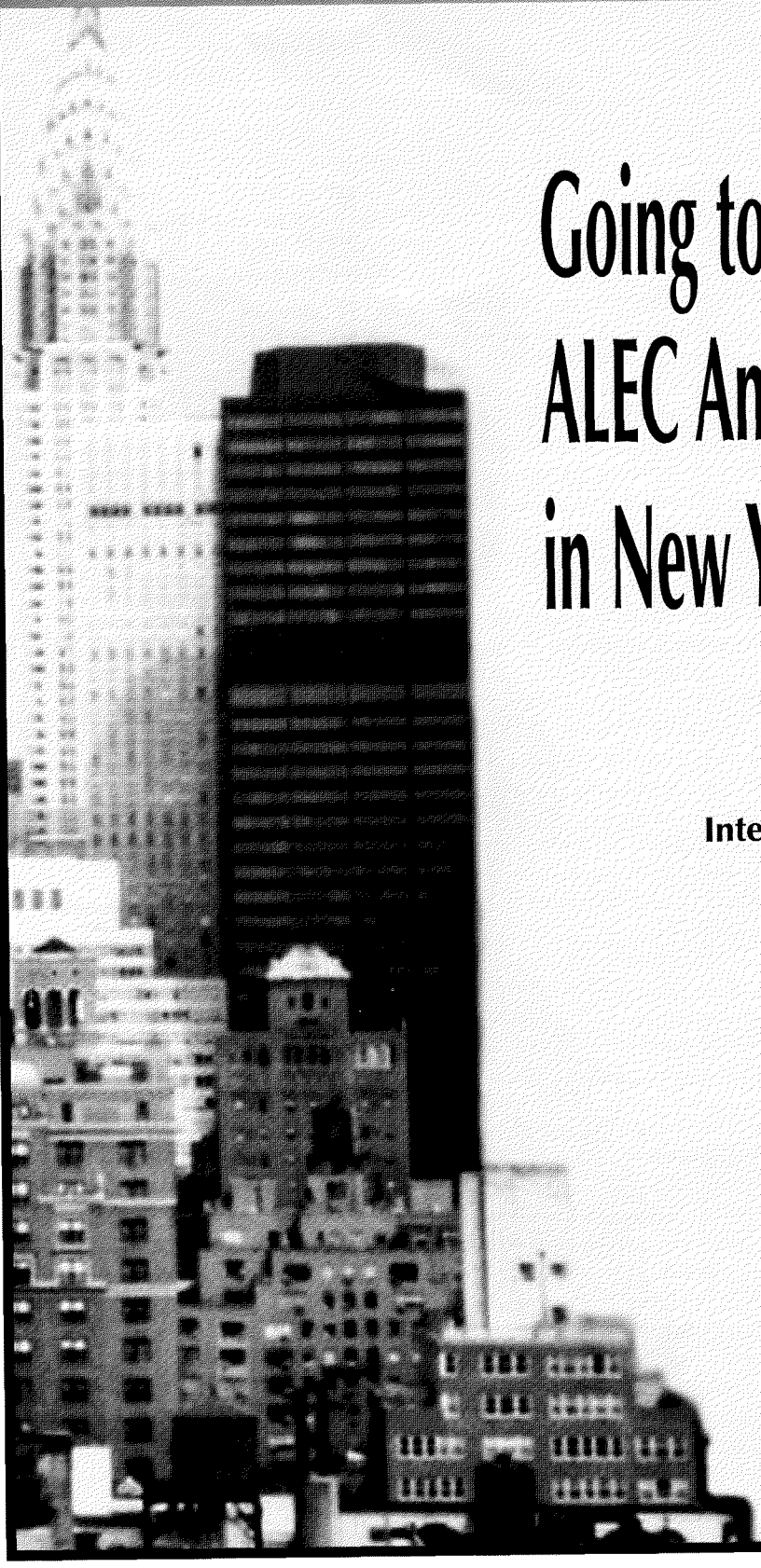

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Privatization

Robin A. Johnson

Robin A. Johnson is director of the Privatization and Government Reform Center at the Reason Public Policy Institute.

Unfunded Mandates Hinder Privatization of Local Services

Ask any school, county, or municipal official what issue riles them the most and many will respond with two words: unfunded mandates. Most surveys of local officials indicate this issue is at or near the top of their concerns.

Local officials say unfunded mandates are well-intentioned regulations, enacted by state and federal governments, that require local governments to perform certain activities but provide no accompanying funding. More cynical officials say mandates allow state and federal officials to take credit for advancing various causes without taking the heat for funding them.

ONEROUS SCHOOL MANDATES

School officials, in particular, face myriad regulations that force them to fund activities they may not otherwise choose to provide. Burdensome mandates are one factor that led to the creation of charter schools operating outside the scope of most federal and state regulations. More flexibility allows charter schools to focus on their core mission of educating schoolchildren.

Two examples involving privatization of services demonstrate how mandates can unfairly limit the efficiency and flexibility of local schools. In many states, school districts face restrictions on the length of contracts, bidding requirements, and renewals for transportation contracts.

Illinois schools, for example, can contract for up to three years for transportation of pupils, and they can extend the contract annually for up to two more years. After this five-year period, the parties may extend the contract on an annual basis unless another interested contractor requests the contract be let by bid. Then, school officials must conduct a competitive bidding process.

Other states have similar restrictions. Minnesota school transportation contracts typically are for two years with a two-year renewal (2+2), while Missouri schools commonly contract using 3+2 designs. Wisconsin and Nebraska have three-year initial contract limits, with renewals varying from one to three years.

Unlike transportation service contracts, generally regulated by state government, contracts with food service companies are subject to both federal and state law. The United States Department of Agriculture (USDA) produces a report that includes pages of regulations and guidance on the contracting process. School districts may enter into contracts for one year with four one-year extensions. At the end of each year, the school district and the contractor have the option to renegotiate the price of the contract and extend it another year. After five years, the contract must be bid again.

BENEFITS OF LONG-TERM DEALS

State and federal officials probably included such limits to prevent long-term sweetheart contracts between school districts and favored venders. The reality is that, under current regulations, renewals with existing providers occur anyway. Regulations do not really prevent insider deals; what they *do* is negatively affect schools that could benefit from long-term deals.

Limits on contract length hurt both school districts and private providers. Short-term contracts make it difficult for contractors to make investments at the beginning of the contract that can be amortized over a longer term. For example, transportation services require a fleet of school buses that cost nearly $100,000 apiece. Food services also require equipment purchases that are better expensed over a longer period.

Investments in better equipment and new technologies can increase efficiency and lower the annual contract cost. Thus, school districts pay more in fees to food and bus service firms for short-term contracts than they would for a multi-year deal.

> *Regulations do not really prevent insider deals; what they do is negatively affect schools that could benefit from long-term deals.*

The effect of lifting contract length requirements can be seen in recent trends involving municipal water and wastewater contracts. A 1997 Internal Revenue Service (IRS) ruling allowed the maximum length of such contracts to increase from five to 20 years. The new regulation has led many cities to enter into long-term deals that increase cost savings, allow more up-front money-saving investments, and enable contractors to hire all existing employees and reduce the workforce through attrition rather than layoffs.

A similar result could be realized in many small and rural school districts that may not be attractive targets for vendors under current rules. Long-term deals would enable firms to open new markets in underserved areas, benefiting both the vendors and school districts.

At a time when alternatives to public schools are increasingly popular, unfair mandates are limiting the creativity and flexibility of school officials to effectively compete. As state and federal officials look for ways to enhance public schools, they should begin with a comprehensive review of existing mandates and eliminate those that put schools at a competitive disadvantage.

FOR MORE INFORMATION...

State Payment for State Mandates Act. This model legislation requires state governments to provide full funding for any net additional cost incurred by local governments in complying with state mandates. (American Legislative Exchange Council, 1996, 1pp.)

Fax Call **312/377-3000** and request document **#0852608**

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Regulation

Susan E. Dudley

Susan E. Dudley directs the Public Interest Comment and Regulatory Accounting projects of the Regulatory Studies Program of the Mercatus Center at George Mason University.

Bush's Regulatory Record

When George W. Bush took office on January 20, 2001, he inherited a regulatory juggernaut, which he immediately made an effort to control. That very day, White House Chief of Staff Andrew Card issued instructions giving new officials time to review key rules before being responsible for enforcing them.

That action caught several rules before they were issued in final form, including EPA's controversial response to a court remand on ozone, some regional haze guidelines, and USDA's listeria in meat products rule.

While it could not stop the publication of EPA's regulation setting tighter standards for arsenic in drinking water, EPA Administrator Christine Whitman did extend the rule's effective date, and began to reevaluate and re-propose the regulations. She correctly questioned the scientific support for the arsenic rule, which would have imposed significant costs on communities where arsenic occurs naturally in water supplies. EPA expects to issue a new proposal this fall, after further review of key scientific and economic issues underlying the rule.

Similarly, the Federal Acquisition Regulatory Council has proposed revoking its final "blacklisting" rule on contractor responsibility. The regulation would have required federal procurement officers to examine not only past violations of labor, environmental, antitrust, and consumer protection laws and regulations, but also pending accusations and administrative complaints before awarding new federal contracts. Those requirements, combined with vague implementation guidance, could have led to inconsistent and arbitrary treatment of prospective contractors, reducing the fairness and effectiveness of the procurement process.

Congress took aim at a key midnight regulation when it used the Congressional Review Act (for the first time, ever) to disapprove OSHA's massive ergonomics program rule. Disapproval under the CRA gives Labor Secretary Elaine Chao a clean slate on which to develop an effective policy for reducing ergonomics injuries.

REFORM EFFORTS WEAKENING?

Political pressure to regulate is strong, however, and despite this promising start toward more carefully considered regulatory policies, there are signs that regulatory reform efforts are already weakening.

Many of the same members of Congress who voted to disapprove OSHA's ergonomics rule are now pressuring Chao to move quickly to issue another one. Despite harsh questioning at her confirmation hearings, she refused to commit to a deadline for issuing new standards, observing that unrealistic deadlines contributed to the demise of the previous standard.

After severe criticism for its proposal to reevaluate the arsenic standard and its decision not to regulate carbon dioxide as a pollutant, the Bush administration has subsequently allowed the majority of midnight environmental regulations to take effect. Some of the more controversial of these include EPA's new regulation of truck design and diesel fuel formulation; revisions to wetland regulations asserting EPA and Army Corps of Engineers jurisdiction over the redeposit of dredged material; and a rule lowering the Toxic Release Inventory reporting threshold for lead from 25,000 lbs. to 100 lbs.

The USDA and EPA have proceeded with publication of proposed rules for listeria in meat products, and regional haze rules. The administration has not contested rules governing medical privacy, restrictions on roads or snowmobiles in national forests, or DOE appliance efficiency standards for clothes washers and water heaters. As part of its National Energy Plan, the administration has also announced its intention to promulgate regulations requiring more energy-efficient appliances and CAFE standards for more fuel-efficient vehicles.

Still, there remains hope for real regulatory reform. The President's appointees are not likely to leave control of regulatory agencies in the hands of special interests and professional advocates. Rather, they have indicated a commitment to protect the public interest and recognize the role states play in regulatory matters. Mitchell Daniels, director of the Office of Management and Budget, testified his office would send agency proposals back for more work if they do not reflect consultation with states and a careful weighing of costs and benefits. Professor John Graham, nominated to head the Office of Information and Regulatory Affairs, will be an asset in the pursuit of better regulatory policy. He is well-known for his careful, analytical approach to examining risks and benefits in regulatory decision-making.

The President's appointees . . . have indicated a commitment to protect the public interest and recognize the role states play in regulatory matters.

In sum, President Bush's record on regulatory matters thus far is mixed. If the people he has chosen to lead on regulatory matters are to succeed in their commitment to reform, they will need the strong support of White House staff and the President himself.

FOR MORE INFORMATION...

New Patterns of Force. Left unchecked, the regulatory machine threatens personal liberties and sound government. (The Objectivist Center, December 2000, 7pp.)

Fax Call **312/377-3000** and request document **#7200101**

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Taxes

Bill Ahern

Bill Ahern is communications director of the Tax Foundation.

Tax Freedom Day™ Comes Later Again

Americans celebrated Tax Freedom Day™ on May 3 this year. That means the nation's taxpayers worked from January 1 to the 123rd day of the year before earning enough money to pay for government—federal, state, and local—and start spending money on themselves and their families.

For yet another year, America will spend more time working to pay taxes than to provide for food, clothing, and shelter combined. Since 1993 the total tax burden has grown markedly. Tax Freedom Day™ has tracked this trend by advancing almost two weeks, from April 20 in 1993 to May 3 in 2001.

For yet another year, America will spend more time working to pay taxes than to provide for food, clothing, and shelter combined.

After this relatively short period of eight years, Americans are spending an extra 13 days working for government. While state and local governments have kept their share of the tax burden in check, federal tax collections have soared, according to economist Scott Moody.

Not since the era of the Vietnam War and President Johnson's "Great Society" has Tax Freedom Day™ been postponed by so long in such a short span of years. Individual income taxes are the largest components of tax bills. In 2001, Americans will have to work an average of 50 days to pay those taxes. Another 29 days will be spent working to pay payroll taxes, with other taxes composing the balance.

Moody points out that the steady rise in the fraction of our income devoted to federal taxes is primarily due to the economic expansion that pushes people into higher tax brackets, filling government coffers faster than Americans' pocketbooks.

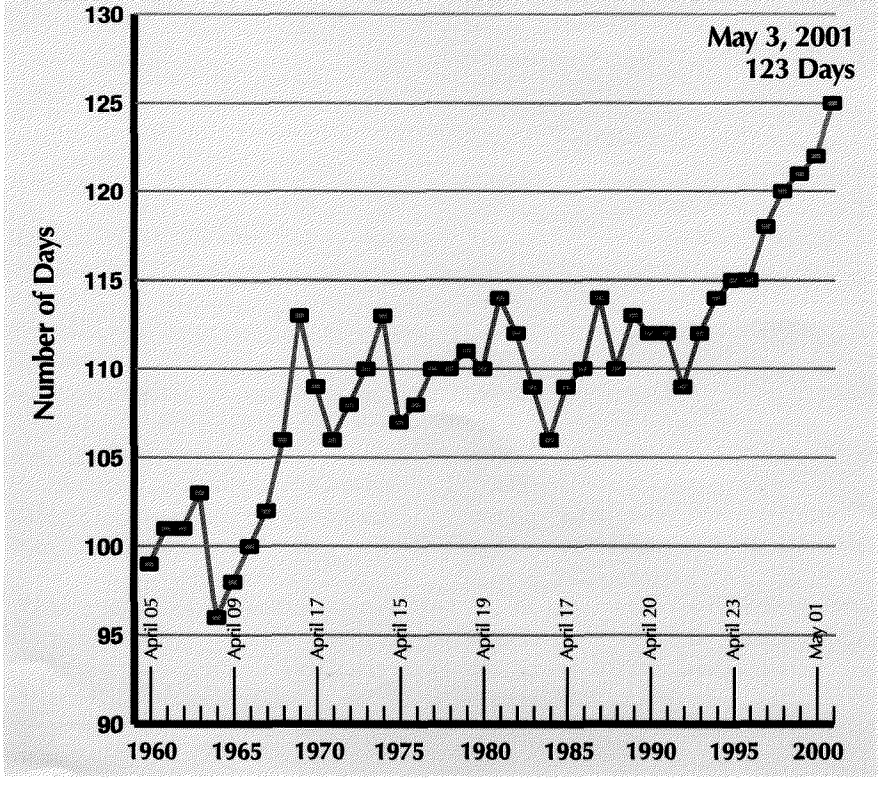
TAX FREEDOM DAY™ BY STATE

Each state has its own Tax Freedom Day™, which varies according to state income and tax rates. Connecticut's is the latest, May 25. New York spent many years as the most highly taxed state but now has the second-latest Tax Freedom Day™, May 14.

At the other end of the tax burden spectrum are states with relatively early Tax Freedom Days™. Alaska's was first, April 16, and South Dakota celebrated on April 21.

The income figure used is Net National Product (NNP), a component of the National Income Product Accounts (NIPA). Computed annually by the Commerce Department's Bureau of Economic Analysis (BEA), NIPA data are the best measure of income available.

Tax Freedom Day™ 1960-2001



FOR MORE INFORMATION...

Time to Repeal the Alternative Minimum Tax. The Alternative Minimum Tax, originally designed to tax the super-rich, affects more and more people each year. (Institute for Research on the Economics of Taxation, February 2001, 2pp.)

Fax Call **312/377-3000** and request document **#8036115**

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Technology

Bartlett D. Cleland

Bartlett Cleland is director of the Center for Technology Freedom at the Institute for Policy Innovation.

The Use Tax and Remote Sales

While the debate in Washington has been how much to cut taxes, throughout the states, many legislators and local officials have been looking for ways to *increase* them.

The attempts have varied across the states, but one trend has been alarmingly consistent: the drive to force merchants to collect taxes, on behalf of state and local governments, on remote purchases. That push has gotten increased momentum as some opportunistic parties eye the expiration, in October, of the federal moratorium on discriminatory Internet taxes and online access taxes.

> *One trend has been alarmingly consistent: the drive to force merchants to collect taxes, on behalf of state and local governments, on remote purchases.*

MORATORIUM ENDING

A three-year federal moratorium was enacted in October 1998 to stop the states and local taxing jurisdictions from piling tax after tax on the Internet. There are two ways states could pile on: through taxing access to the Internet, such as taxes on an AOL account; and by creating taxes that discriminate against the Internet, such as taxing the purchase of a newspaper online but not taxing an over-the-counter sale.

Remote purchases—potentially the most lucrative occasion for taxes—occur when a consumer purchases an item from a jurisdiction outside of where he is at the time of purchase. Catalog or telephone sales are an old example of remote purchases; the Internet merely updates the phenomenon.

Years ago, the Supreme Court told states that the current web of taxes they had spun was far too complex to allow them to force merchants to collect tax on remote purchases. Such a requirement was, in fact, unconstitutional. With minor exceptions, the states have shown no interest in simplifying the maze of taxes, jurisdictions, and tax bases.

Contrary to popular belief, the current moratorium does not affect the ability of states to collect their own sales and use taxes. The moratorium merely prohibits states from imposing multiple and discriminatory taxes on electronic commerce and from imposing taxes on Internet access.

If the current moratorium is not extended, either temporarily or permanently, the situation will revert to where it was years ago. At that time, states were levying discriminatory taxes on the online delivery of goods. In addition, without the moratorium, states will be free to return to taxing Internet access, effectively raising the cost of Internet access for all income levels. Doing so would most strongly inhibit Internet use among those least able to pay.

THE TOOLS EXIST

Interestingly, in every jurisdiction where sales taxes are levied the states already have the means, but not the will, to collect the remote taxes through a use tax.

Each sales tax jurisdiction, if it is willing to take a politically unpopular path, can, through a use tax, require its citizens to remit taxes on items purchased in other jurisdictions. Many state tax forms now require taxpayers to list the value of purchases made elsewhere, and pay the use tax on that value. Few states enforce this requirement, which requires the honesty of the taxpayer and most importantly, the will of the state to educate its citizens about the tax.

The states, counties, and cities seem to have no end to the taxpayer money they are willing to spend on Capitol Hill to persuade Congress to buy into a scheme to unconstitutionally empower the states to force merchants to collect their sales tax. At the same time they claim to not have the resources to educate their citizens and enforce their own tax laws.

> *The federal moratorium on discriminatory Internet taxes and online access taxes expires in October.*

BUCKING THE TREND

State and local policymakers seem to be bucking the trend of lessening the burden of taxes on individuals and businesses. They still look to the Internet as something of a Solomon's Mine—a rich source of treasure for the state's coffers. This limited view has led the states and localities to collectively be opportunists on Capitol Hill.

They seek to upend the Constitution and force others to collect taxes for them even in a situation so complex, due to thousands of taxing jurisdictions, tax bases, and systems for tax remittance, as to be found unconstitutional by the Supreme Court.

The states should look to spend taxpayers' money more wisely than in lobbying for this new scheme. Rather, they should turn to educating their citizens about the tax laws and cleaning up the mess they developed in their taxing zeal.

FOR MORE INFORMATION...

Internet Purchases: To Tax or Not to Tax Plans to create a national tax program using trusted third parties threatens federalism and could compromise personal privacy. (Mackinac Center for Public Policy, March 2000)

Fax Call **312/377-3000** and request documents **#8084303** (summary, 4pp.), **#8084406** (part 1, 11pp.) **#8084407** (part 2, 11pp.)

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Welfare

Making Charitable Choice Work

Michael B. Barkey

Michael B. Barkey is president of the Center for the Study of Compassionate Conservatism and editor of *The Next Phase of Welfare Reform* (forthcoming from the Acton Institute).

The 1996 welfare reform law, enacted to help overcome welfare dependency by individuals, includes a provision that could result in welfare dependency on the *organizational* level.

The snare might be the Charitable Choice provision, which permits faith-based organizations to compete more easily for direct grants from the federal government. If President Bush makes good on his promise to greatly expand Charitable Choice, an entire class of religious organizations could become dependent on government.

This state of affairs would undermine the effectiveness of the organizations working to help people make a safe transition from welfare to work. It's difficult for an organization to make the moral case for independence and self-sufficiency when it is itself dependent on the dole.

Despite the potential drawbacks of Charitable Choice, including charities in the distribution of federal social spending will remain a central component of Bush's Faith-Based Initiative. And, in some ways, this is a fortunate development.

While measures like the Charitable Tax Credit are important for boosting charitable giving nationwide, conservatives are wrong to push these measures alone. A strategy focused entirely on tax reforms could mean that neighborhoods most in need of charity will continue to receive less-than-adequate funding. Small, inner-city ministries that operate on shoestring budgets are rarely able to afford the expensive outreach efforts necessary to tap into the vast resources available in more affluent communities.

IMPROVING CHARITABLE CHOICE

Fortunately, the Charitable Choice law can be changed to minimize the hazards of organizational dependency while maximizing the benefits of government assistance to nonprofit, faith-based organizations in the neediest communities.

Here's how. The regulatory and tax reforms that make up a large portion of Bush's Faith-Based Initiative should be advanced as part of a larger reform strategy that limits Charitable Choice funds to small, time-limited grants, including start-up grants to organizations located in poor communities.

Under a reformed Charitable Choice regime, a charitable organization, like a welfare recipient, would have time-limited benefits, becoming ineligible for government assistance after three years. And, like work requirements for individuals, public dollars for the next fiscal year would flow only to those private charities actively working to find private sources of funding to replace them. This would help ensure that the organization enhances its outreach efforts without becoming dependent on government funds.

A reformed Charitable Choice law would need to limit organizations to a single grant of no more than three years. This is important, because removing the prospect of receiving another grant in subsequent years will greatly diminish the temptation for an organization to tailor its program in midstream to appease government grantmakers, either by watering-down essential religious content or chasing dollars available for projects not within an organization's mission. The focus of an organization would constantly be on its mission, the future, and independence from the state. Charitable organizations, then, would not develop into a constituency in favor of expanding the welfare state—something an expansion of Charitable Choice in its current form cannot protect against.

The Charitable Choice law can be changed to minimize the hazards of organizational dependency while maximizing the benefits of government assistance to nonprofit, faith-based organizations in the neediest communities.

STATE-BASED EFFORTS

The White House Office of Faith-Based and Community Initiatives, created earlier this year by Bush to help strengthen civil society, should be joined by similar offices in the 50 states. Whether federal or state, each office can help poverty-fighting organizations find private sources of funding. For instance, state and federal offices could publish a list of groups that receive public dollars and are in need of additional private dollars to sustain their good work.

Similarly, the offices could hold charity fairs in more affluent neighborhoods to heighten the awareness of community members and business leaders about the need to support specific poverty-fighters operating on the "other side of the tracks." And other measures—like media tours of successful charities to draw attention to worthy efforts and best practices—could help organizations that typically cannot afford professional fundraisers.

Instead of making faith-based organizations dependent upon a series of unending and ever-expanding grants, government must help link individuals looking to donate generously of their time and money to poverty-fighting organizations in need. Through a reformed Charitable Choice regime, the government could actually help *strengthen* civil society, rather than subvert it.

FOR MORE INFORMATION...

Re-Funding Social Services. *David Kuo* surveys tax credits, vouchers, and direct funding of faith-based organizations. (Blueprint, Spring 1999)

Fax Call **312/377-3000** and request documents **#8084303** (summary, 4pp.), **#8084406** (part 1, 11pp.), and **#8084407** (part 2, 11pp.)

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The Aptly Named State Power Authority

by Hon. John Campbell

California has long been the world's best example of a land where innovation, entrepreneurship, and new ideas are permitted to grow and flourish. The state that has seen the gold rush, the transcontinental railroad, and the growth of the motion picture, aerospace, and technology industries has regularly rejected the authoritarian hand of excessive government power.

A study of the gold rush is instructive here. There had been discoveries of gold in many other places at many other times in history. But everywhere else, any gold that was found was considered the property of the King or the State. Only in California was gold the property of whoever found it. So more people looked for gold in California, more found it, and more profited from it than at any previous time in history . . . all because the power of the state was subordinated to the power of the individual.

So let's see: The state government got us into this problem . . . and now we are to trust that same government to get us out?

But today, even in California, we are seeing the use of excessive government power. While in the middle of an electricity supply crisis, the Democrat-controlled California legislature voted along party lines to create the aptly named "State Power Authority." Vladimir Lenin could not have come up with a better name to more accurately convey a sense of oppressive and magisterial control. The very name conjures images of jack-booted bureaucrats with kilowatt-measuring devices coming to see if perhaps you are using an unauthorized electrically powered device.

The stated objective of the State Power Authority is to rescue us from the tyranny of the power generators, whom Governor Gray Davis has called "the biggest snakes on the planet Earth." Of course, this crisis was not caused so much by those "snakes" as by the inaction of the governor himself, the malfeasance of his Public Utilities Commission, and the flaws in the 1996 restructuring legislation.

So let's see: The state government got us into this problem . . . and now we are to trust that same government to get us out?

A NEW UTILITY

The State Power Authority, now law in California after the governor inked his approval, will be funded with $5 billion paid for by all electricity users. Those funds can be used to buy power transmission lines, power distribution systems, generating plants, and basically anything that has anything to do with bringing electric power to California consumers.

The State Power Authority is not like the municipal utilities that exist in Los Angeles and Sacramento and various other locations around the country. Those municipal utilities are locally controlled; they are governed by elected boards that must be responsive to voters and electricity users.

The State Power Authority, by contrast, will be a massive, statewide organization run by appointed bureaucrats responsive to no one. If you look at the Department of Motor Vehicles and Internal Revenue Service as models of efficiency and customer service, you'll be very pleased with California's new power authority. Gigantic monoliths, whether public or private, are never as responsive or effective as multiple smaller entities that move faster, innovate more, and compete for your business.

NOT THE GOVERNMENT'S BUSINESS

And besides, why should a state-run entity be investing in this arena anyway? There is plenty of private capital available to fund the needed investments in our power system. Just recently, Warren Buffet, of Berkshire Hathaway Investment Company, indicated a willingness to invest $10 billion of his company's resources in the power business. That's just one of many companies with resources to bring to this market. Shouldn't the state focus on fixing our roads and our schools first?

[W]hy should a state-run entity be investing in this arena anyway? There is plenty of private capital available to fund the needed investments in our power system.

The State Power Authority has all the makings of an inefficient, bloated, expensive, and intrusive state bureaucracy. Wouldn't it be better if we remembered the gold rush, and allowed individuals and businesses all over this state to get into the electricity business? They would try new things, sometimes failing but often creating new and better ways of providing power. In an open market, they would compete and innovate. They would give many choices to consumers. They would respond to the market, or they would perish.

It is unfortunate that Democrats in control of California's government have chosen to emulate a socialist model of state control, rather than the entrepreneurial model of California's gold rush. We should be saddened . . . but not surprised.

John Campbell (R-Irvine) represents the 70th District in the California Assembly. He is a member of the Assembly Special Committee on Energy Cost and Availability and the Oversight Committee on Electrical Energy.

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Fiscal Impact of Proposed Tuition Tax Credits for the State of New Jersey

By Joseph L. Bast

In April, The Heartland Institute released its 96th Heartland Policy Study, "Fiscal Impact of Proposed Tuition Tax Credits for the State of New Jersey," by Heartland President Joseph L. Bast. Copies of the 38-page report are available from The Heartland Institute for $10.00 each; the full text is also available on Heartland's Web site at www.heartland.org.

This study reports the results of an independent examination of the likely fiscal impact of two proposed tuition tax credit plans for New Jersey. The author concludes the plans would reduce the after-tax price of tuition by between 32 percent and 95 percent, depending on family income, grade level, and choice of school. Lower tuition would increase total private school enrollment by 40 percent (from 207,275 currently to 290,958). State tax revenues would decline $585 million. Falling public sector enrollment would generate avoided costs of $1.065 billion, for net annual savings to the state treasury of $480 million.

PCIA and EOA would enable an additional 83,600 students, including 30,000 students from low-income families, to enroll in the private schools of their parents'

THE PROPOSALS SUMMARIZED

The **Educational Options Act (EOA)** would allow individuals, estates, trusts, and companies to receive a credit against state income and corporate income taxes of not more than 75 percent of the amount they contribute to "qualifying entities" that provide educational scholarships to children attending nonpublic schools. For individuals, estates, and trusts, the credit is limited to $10,000; for companies, it is limited to 10 percent of the company's annual corporate income tax liability.

The **Parental Control and Involvement Act (PCIA)** would allow parents of school-age children to receive a credit against their state income tax liability equal to 50 percent of qualified educational expenses, up to a maximum credit of $500 per dependent child. All parents of school-age children would be eligible to receive a credit against their state income tax equal to 100 percent of the amount spent on computer hardware and software related to curriculum or instruction, up to a maximum credit of $150 per household.

IMPACT ON THE PRICE OF TUITION

The Educational Options Act (EOA) would most likely raise less funds than needed to pay the tuition of every child who wishes to attend private schools. Realistic estimates of participation levels and average gift size suggest EOA would raise between $340 million and $530 million a year, enough to provide scholarships to between 57 percent and 89 percent of students wishing to attend private schools.

The Parental Control and Involvement Act (PCIA) allows tax credits of up to $500 a year, but many families wouldn't qualify for the entire amount. Families earning less than $40,000 a year, for example, would "zero out" their entire state income tax liabilities before reaching the cap for just one child. A family earning $20,000 a year pays only $210 per year in state income taxes. Because the tax credit for education-related computer hardware and software would be 100 percent of expenses (up to $150), many parents would apply for this credit before or instead of applying for the 50 percent tax credit against tuition and other expenses.

A plausible scenario taking into account both the limited funds available from EOA and the limited tax credits provided under PCIA appears on the facing page in Table 1. It shows the two plans would reduce the cost of tuition for a typical family by as little as 32 percent (for a nonpoor family sending a child to an independent secondary school) to as much as 95 percent (for a "poor" family sending a child to a parochial elementary school).

IMPACT ON PUBLIC AND PRIVATE SCHOOL ENROLLMENTS

Economists estimate that a 10 percent increase in the price of private schooling reduces the probability of a family choosing private schooling by 4.8 percent, while a 10 percent reduction in price causes a 4.8 percent increase in the probability of choosing private schools. Table 2 combines this estimate of price elasticity with the previously calculated effects of

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PCIA and EOA on tuition prices to reveal the tax credit plans' impact on private school enrollment.

Total private school enrollment would increase 40 percent, and enrollment by children from "poor" families would increase 45 percent. Most of the increase would occur at the elementary school level (largely because elementary-school enrollment, spanning nine years, is much larger than secondary-school enrollment, spanning only four years). Some 37 percent of the new students (30,518 out of 83,683) would be from "poor" families. Public school enrollment would decline by 6.97 percent as students transfer from public to private schools.

IMPACT ON STATE TREASURY

The impact of the two programs on the state treasury is calculated by subtracting the total loss of revenue caused by tax credits from the avoided costs due to declining public school enrollment. Table 3 shows the EOA and PCIA would save New Jersey taxpayers approximately $480 million a year. This estimate is most likely to represent savings several years after the programs' start, assuming the availability of tax credits is well known, that they are easy to apply for, and that no new developments or trends arise that significantly influence the price or supply of private schooling.

The [New Jersey] tax credit plans would increase private school enrollment by 40 percent by prompting 7 percent of students currently enrolled in government schools to transfer to private schools.

CONCLUSION

PCIA and EOA would enable an additional 83,600 students, including 30,000 students from low-income families, to enroll in the private schools of their parents' choosing. The programs would also produce a considerable net savings, $480 million, to the state treasury. However, the limits of the tax-credit approach are clear when one observes the very small impact of the individual tax credits contained in PCIA. A 50 percent tax credit capped at $500 would provide too little tax relief to have any effect on private school enrollment.

This analysis confirms, though cautiously, what the supporters of one of the bills, EOA, assert in its preamble: "It is possible for low income children to attend privately managed schools while simultaneously saving State taxpayers many hundreds of millions of dollars annually."

TABLE 1 Impact of PCIA and EOA on Average After-Tax School Tuition Paid in New Jersey

Institution	Average Tuition*	Likely Tax Credits and Scholarships			Likely Price Reduction
		PCIA	*EOA*	*Total*	
Elementary parochial schools					
"Poor" families	$2,082	$104	$1,874	$1,978	95%
Nonpoor families	$2,082	$291	$1,500	$1,791	86%
Elementary independent schools					
"Poor" families	$5,411	$110	$4,870	$4,980	92%
Nonpoor families	$5,411	$500	$3,000	$3,500	65%
Secondary parochial schools					
"Poor" families	$4,660	$110	$4,194	$4,304	92%
Nonpoor families	$4,660	$500	$3,000	$3,500	75%
Secondary independent schools					
"Poor" families	$10,982	$110	$6,517	$6,627	60%
Nonpoor families	$10,982	$500	$3,000	$3,500	32%

* Many private schools adjust their tuition based on a family's ability to pay and offer discounts to families with more than one child attending the school. This table does not reflect such policies.

TABLE 2 Impact of PCIA and EOA on Private School Enrollment in New Jersey

Institution	% Tuition Reduction	% Enrollment Increase	Current Enrollment	Projected Increase	Total Enrollment
Elementary parochial schools					
"Poor" families	95	46	45,456	20,728	66,185
Nonpoor families	86	41	92,290	38,097	130,388
Elementary independent schools					
"Poor" families	92	44	7,896	3,487	11,383
Nonpoor families	65	31	16,032	5,002	21,034
Secondary parochial schools					
"Poor" families	92	44	12,821	5,662	18,483
Nonpoor families	75	36	26,031	9,371	35,402
Secondary independent schools					
"Poor" families	60	29	2,227	641	2,869
Nonpoor families	32	15	4,522	695	5,216
Totals	—	40	207,275	83,683	290,958
"Poor" families	—	45	68,401	30,518	98,919
Nonpoor families	—	38	138,874	53,165	192,039

TABLE 3 Fiscal Impact of Tuition Tax Credits

Totals	Subtotals	PCIA
	$92,000,000	50% tax credits for parents of children attending private schools
	$56,000,000	100% computer hardware and software tax credits
	$48,000,000	50% tax credits to parents of children attending public schools
	$4,400,000	50% tax credits to homeschoolers
$200,400,000		**Revenues lost due to PCIA**
		EOA
	$272,800,000	75% tax credits to persons contributing gifts averaging $1,000
	$58,500,000	75% tax credits to corporations giving to scholarship-granting entities
	$53,000,000	75% tax credits to donors contributing gifts averaging $10,000
$384,300,000		**Revenues lost due to EOA**
$584,700,000		**Total revenues lost**
		Avoided costs due to falling public school enrollment
	$652,813,035	Non-urban students transferring from public schools
	$412,115,072	Urban students transferring from public schools
$1,064,928,107		**Total avoided costs**
$480,228,107		**Net savings to state treasury**

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Got Milk Subsidies?

by Dave Juday

Before the fiscal year ends this September, Congress must face a number of decisions on interstate dairy compacts.

- Should the Northeast Interstate Dairy Compact (NEIDC)—binding Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut—be extended beyond its September 30 sunset date?
- Should it be expanded to include New York, New Jersey, Pennsylvania, Delaware, and Maryland?
- Should a Southern Dairy Compact be established for West Virginia, Virginia, North Carolina, Georgia, Alabama, Mississippi, Louisiana, Arkansas, Oklahoma, Kansas, Missouri, Kentucky, and Tennessee?

Any fair review of the impact of the one existing compact, the NEIDC, leads to one unequivocal answer to all the preceding questions: No. In fact, the four-year history of the NEIDC is checkered enough that those state legislatures that approved compact-enabling legislation ought to take a serious look at repealing those statutes.

The NEIDC was a temporary program, created in 1996, intended to provide a transition for New England dairy farmers; it was to sunset in 1999. Instead it was extended for two years, expiring at the end of September 2001.

In the meantime, however, 25 states have approved legislation that would allow them to join an expanded NEIDC, or join a 14-state Southern Dairy Compact.

Should the Northeast Interstate Dairy Compact be extended? Should it be expanded? Should a Southern Dairy Compact be established? Any fair review of the evidence leads to one unequivocal answer: No.

The NEIDC and the proposed compacts empower an appointed regional commission to effectively set the minimum price processors must pay for beverage (liquid) milk. This price-setting power even applies to milk entering from states outside the compact.

The Constitution allows states to enter into compacts, with congressional approval, but these arrangements more typically have been for projects such as airports and bridges. Some in the early part of the twentieth century were created to settle boundary disputes between states. Ironically, in the early part of the twenty-first century, the NEIDC has established new boundaries—economic boundaries—between the New England states.

MASSACHUSETTS PAYS VERMONT

Because the NEIDC provides for a minimum price for milk, Massachusetts milk drinkers have paid upwards of $53 million more for milk than they would have in the absence of the NEIDC. Moreover, nearly 85 percent of that milk price overage has been distributed as windfall payments to dairy farmers outside Massachusetts.

Such an imbalance is a predictable factor of demographics. Massachusetts has six million consumers, but only about 300 dairy farms. Second in population is Connecticut; consumers there have sent about $22 million out of state. Rhode Island and New Hampshire have seen a net outflow due to the milk compact of $9.6 million and $5.5 million respectively.

That leaves Maine and Vermont. They are the sole two states for which the NEIDC has generated a net positive cash flow. And even then, Vermont's $50 million in payments to dairymen is more than a dozen times greater than Maine's $4 million.

Dairy compacts do not, as the States Ratification Committee says, "return power to the states over fluid milk pricing." Rather, compacts give that power to a regional commission. And that regional commission is powerless over the region's demographics, which in the end determine which states win and which states lose.

Two-thirds of the states in the New England compact see an economic net outflow. Creating a Southern compact would replicate this imbalance in another part of the country. Southern state legislators would do well to consider if their state would become the Massachusetts of the South.

KILLING THE CASH COW

Expanding the NEIDC merely would shift the cash flows proportionately among the broader group of states. It also would provide an interesting intellectual exercise in econometrics: two of the states slated to join—New York and Pennsylvania—are not only populous, but also the nation's third and fourth largest dairy producers.

Nonetheless, one can hardly imagine Maryland and New Jersey, with proportionately smaller dairy producer populations, holding their own economically against Pennsylvania.

And why New York would want to join the NEIDC is beyond reason. Because New England—much of which borders on the New York state line—doesn't produce enough milk for its own consumption, about 25 percent of the windfall revenues generated by the NEIDC already go to dairy farmers in New York who supply the region's needs. Joining the compact, then, would simply increase the grocery bill for consumers in the rest of the Empire State.

The ultimate insult added to consumers' economic injury, however, is this: In the first year of the NEIDC, dairy farms went out of business at a 25 percent faster rate than before the compact. New states entering a compact can expect the same.

Dave Juday is an adjunct fellow with the Hudson Institute's Center for Global Food Issues.

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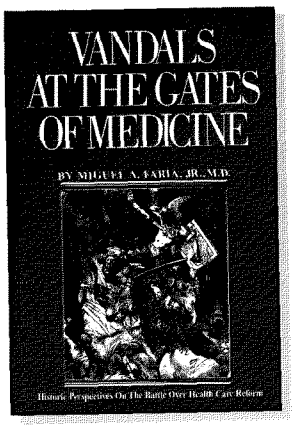

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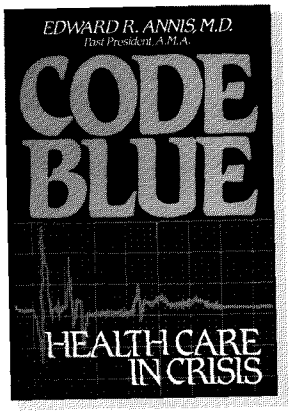

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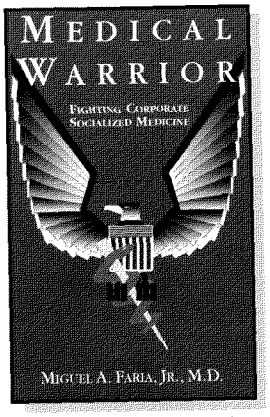

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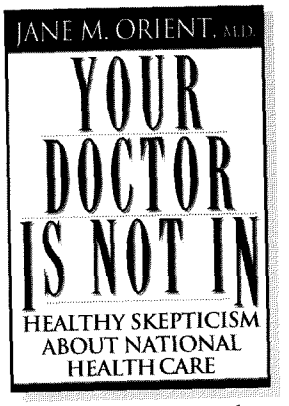

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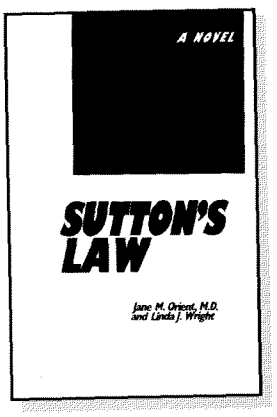

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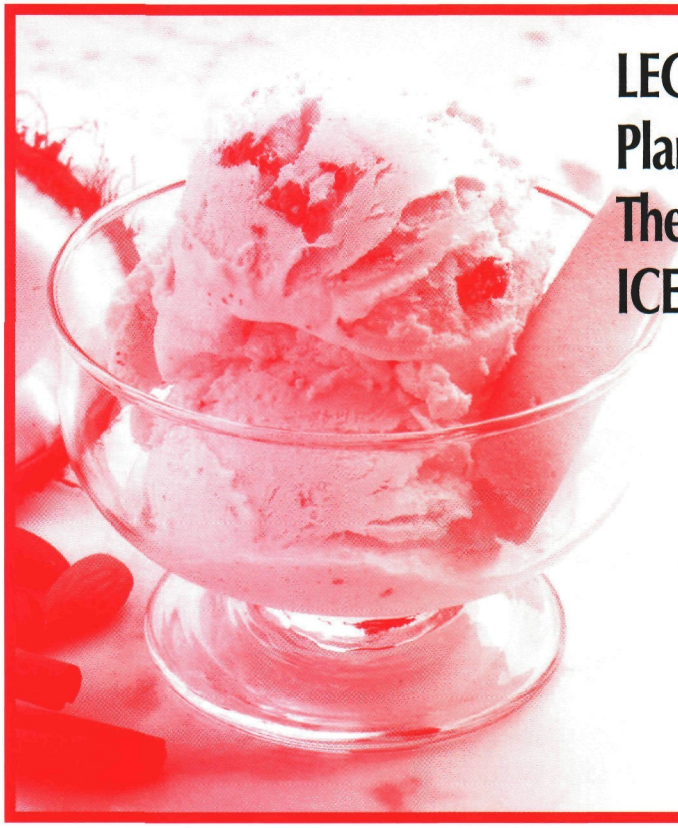

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